

REMARKS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 40-51 and 68-82 are presently active in this case. Claims 1-39 and 52-67 were cancelled by previous amendments. The present Amendment adds new Claims 80-82 without introducing any new matter. Support for new Claims 80-82 can be found in Applicants' specification at least in paragraphs [0200] - [0205].

The outstanding Office Action rejected Claims 40-51 and 68-79 under 35 U.S.C. § 102(b) as being anticipated by *Maruyama* (Japanese Patent Application No. 09-354401, Japanese Patent No. 11-187013).

In response to the rejection of Claims 40-51 and 68-79 under 35 U.S.C. § 102(b), Applicants respectfully request reconsideration of this rejection and traverse the rejection, as discussed next.

Briefly summarizing, Claim 40 relates to a device for use in an information processing system that distributes encrypted message data. The device includes, *inter alia*: a receiver for receiving the encrypted message data and an enabling key block (EKB), the EKB including encrypted keys and a tag, the encrypted keys including at least one renewed key and the tag including position discrimination data that associates each of the encrypted keys with nodes and leaves of a hierarchical tree structure; the encrypted keys of the EKB including keys corresponding to one or more necessary nodes or leafs of a *simplified tree structure*, the simplified tree structure being constructed from the hierarchical tree structure by selecting one or more paths between a top node and an end point node or a leaf of the hierarchical tree structure and *removing one or more unnecessary nodes being in the selected one or more paths*.

As explained in Applicants' specification, Claim 40 improves upon background information processing systems having hierarchal tree structures, since the amount of data included in the tree structure is reduced.¹

The pending Office Action asserts that *Maruyama* teaches a feature regarding removal of the unnecessary nodes, and points out to *Maruyama*'s teachings at page 13, lines 12-25, and at paragraph [0021]. Applicants respectfully disagree with such assertion and provide herewith an English translation of paragraphs [0018] to [0021] of *Maruyama*.

For example, in paragraphs [0020]-[0021] *Maruyama* explains the withdrawal of two or more users from a subscription. *Maruyama* clearly explains that when two or more users withdraw from the subscription, the updating and redistribution of a key can be made efficient by grouping the withdrawn users into the same branch. Therefore, such branch would not be used again when redistributing keys. The outstanding Office Action seems to equate the withdrawal of members of a subscription with the withdrawal of nodes from the tree. Applicants disagree with such contention, since this is not taught by *Maruyama*. While *Maruyama* may explain that only a portion of the tree is addressed when updating the keys, *Maruyama* clearly fails to teach that the keys that are not used anymore are **removed**, as required by Applicants' Claim 40.

The outstanding Office Action further states that "by using only the relevant nodes, the unnecessary ones are removed" (Office Action, page 3, lines 18-22). Applicants respectfully disagree with such assertion, since this rejection seems to be an improper inference of a feature from the teachings of *Maruyama*. Such feature cannot be inferred from *Maruyama*, since the Office Action fails to show "that the alleged inherent

¹ Applicants' specification for example in paragraph [0001], and [0204].

characteristic *necessarily* flows from the teachings of the applied references"²

In other words, it is very possible that older branches of the tree are not addressed, but are nevertheless *not removed* from the tree. An analogy can be made to the use of databases: Old entries in a database may never be used again and grouped under a same folder, and therefore the database access will become more efficient. However, this does not mean that the data is removed from the database, to decrease the amount of data in the database. As further explained in *Maruyama*, "a very efficient generation and distribution of a key can be performed." However, *Maruyama* is clearly silent on any feature that would reduce the amount of data. As explained in Applicants' specification, "a considerable reduction in data quantity is realized."³ New Claims 80-82 further emphasize such a feature.

Therefore, the applied references fail to teach or suggest every feature recited in Applicants' claims, so that Claims 40-51 and 68-82 are believed to be patentably distinct over *Maruyama*. Accordingly, Applicants respectfully traverse, and request reconsideration of, the rejection based on *Maruyama*.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

² See MPEP 2112 (emphasis in original) (citation omitted). See also same section stating that "[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic," (emphasis in original). See also *In re Robertson*, 49 USPQ2d 1949, 1951 (Fed. Cir. 1999) ("[t]o establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill,'" citing *Continental Can Co. v. Monsanto Co.*, 948 F2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991); and "[i]nherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient," *Id.* at 1269 (citation omitted)).

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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³ See Applicants' specification, for example in the Abstract, and paragraph [0001].